

Oregon State Legislature  
Oregon State Capitol  
Senate Committee on Business and Transportation  
900 Court Street NE  
Salem, OR 97301

2/4/15

*Sent via email to: james.labar@state.or.us*

**Re: SB 317, Discretionary Clauses - NAMIC's Written Testimony in Opposition**

Dear Senator Beyer, Chair; Senator Girod, Vice-Chair; and members of the Senate Committee on Business and Transportation:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the committee for the February 4, 2015 public hearing. Unfortunately, I will be in another state at a previously scheduled legislative meeting at the time of this hearing, so I will be unavailable to attend. Please accept these written comments in lieu of my testimony at the hearing. This letter need not be formally read into the committee hearing record, but please reference the letter as a submission to the committee at the hearing.

NAMIC is the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country's largest national insurers.

The 1,400 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$196 billion in annual premiums, accounting for 50 percent of the automobile/homeowners market and 31 percent of the business insurance market. NAMIC has 153 members who write property/casualty insurance in the State of Oregon, which represents 46 percent of the insurance marketplace.

Through our advocacy programs we promote public policy solutions that benefit NAMIC companies and the consumers we serve. Our educational programs enable us to become better leaders in our companies and the insurance industry for the benefit of our policyholders.

NAMIC appreciates the legislature's commitment to promoting the best interest of insurance consumers, and the legislature's desire to make sure that the terms and conditions of insuring agreements are consistent with the requirements of the insurance code and state law. However, there is no evidence to support the contention that insurers are asserting inappropriate discretion in interpreting the insuring agreement and adjusting insurance claims.

NAMIC is opposed to the proposed legislation for the following reasons:

1) The Oregon Department of Consumer and Business Services, Insurance Division (OID) is presently engaged in the rulemaking process to adopt rules relating to the use of discretionary clauses, so the proposed legislation is unnecessary, and could be potentially in conflict with the OID proposed regulations.

2) NAMIC believes that property and casualty, workers' compensation, and commercial insurance should be excluded from the scope of SB 317 for the following reasons:

**a) The National Association of Insurance Commissioners' (NAIC) Model Rule restricts the application of the Discretionary Clause Rule to health and disability insurance.**

The NAIC model rule adoption process requires extensive debate over the scope and language of any NAIC proposed model rule, and the commissioners who participated in and voted on the Discretionary Clause model rule decided after due consideration not to include all lines of insurance within the scope of their model rule. Since the NAIC is pro-consumer protection and Oregon usually adopts NAIC models, it makes sense for SB 317 to follow the NAIC's lead on the scope of discretionary clause regulations and promote national uniformity on this insuring agreement issue. Additionally, the proposed legislation would require national and regional insurers to have to modify their policies, contracts, and endorsements to address an Oregon-only disclosure requirement.

**b) The national trend in states adopting laws on the use of discretionary clauses supports limiting the scope of this Discretionary Clause Legislation Rule to just health and disability insurance.**

As of 2012, nineteen (19) states have adopted the NAIC Discretionary Clause Rule and *none* of these states have expanded the scope of their rule to apply to property and casualty, workers' compensation, and commercial insurance. A number of the adopting states (CA, HI, NY, and WA) are well-known for their vigorous approach to consumer protection and none of these states expanded the scope of their discretionary clause rule to apply to property and casualty, workers' compensation, and commercial insurance.

**c) There is no regulatory necessity to justify expanding discretionary clause prohibitions to apply to property and casualty, workers' compensation, and commercial insurance.**

As the OID acknowledged in its rulemaking, there are no pending discretionary clause regulatory problems before the OID that relate to property and casualty, workers' compensation, and commercial insurance. Moreover, the OID already has clear regulatory authority to invalidate any contractual provision that is inconsistent with the insurance code or state law. Specifically, the OID has the authority and ability through market conduct actions and other regulatory powers to address any discretionary clause issue that it believes is inconsistent with state insurance law. Further, if a consumer has a dispute with an insurer over the interpretation of an insuring agreement or the scope of insurance coverage, the consumer has the opportunity to bring their claim to the OID, which has regulatory power to order payment of the disputed claim,

or the consumer can seek redress of their contract dispute through the judicial system (or an ALJ in workers' compensation). Further, the judicial system has the authority and power to interpret the contract, and award contractual and statutory damages to the consumer.

3) NAMIC is concerned that several of the proposed provisions in SB 317 could be interpreted in a way so as to create serious claims adjusting problems for insurance companies. The proposed legislation could arguably be interpreted to alter or abrogate certain agreed upon standard contract provisions that are reasonable and necessary for the fair and timely adjusting of insurance claims.

4) SB 317 would require a consumer disclosure that would create unnecessary administrative costs and burdens for insurers without providing any practical benefit to the insurance consumer. Specifically, why should each policy, contract or certificate of insurance be re-written, re-printed and re-disseminated to policyholders to state the obvious, i.e. that the policy, contract, or certificate conforms with all applicable provisions of the Oregon Insurance Code, and that if a term, condition or other provision of the policy, contract or certificate conflicts with a provision of the Insurance Code, the Insurance Code controls over the conflicting provision in the policy, contract or certificate? No contract, including insuring agreements, executed in the State of Oregon may be in violation of state law. In fact, the judicial system which has legal jurisdiction over contract disputes has the power to invalidate any contractual provision as being in violation of state law or void as against public policy. Moreover, the OID already has regulatory authority to reject any filed policy, contract, or certificate that does not comply with the Insurance Code as part of the regulatory form review and approval process or as part of a market conduct examination.

Since there is no legal or regulatory need for SB 317, the proposed consumer disclosure requirement would impose nothing more than an expensive "feel good, do no good" administrative burden on insurers and create an unnecessary insurance rate cost-driver expense that could adversely impact the affordability of insurance for consumers.

For the aforementioned reasons, NAMIC respectfully requests that the Senate Committee on Business and Transportation **VOTE NO on SB 317**, because the proposed legislation won't create any actual benefits for consumers, just new administrative costs.

Thank you for your time and consideration of NAMIC's written testimony. Please feel free to contact me at 303.907.0587 or at [crataj@namic.org](mailto:crataj@namic.org), if you have any questions pertaining to my written testimony.

Respectfully,



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